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**BEFORE THE ARIZONA CORPORATION COMMISSION****COMMISSIONERS**

Arizona Corporation Commission

**DOCKETED**

APR 28 2022

DOCKETED BY *ef*

DOCKET NO. AU-00000A-16-0141

DECISION NO. 78544

IN THE MATTER OF THE INQUIRY INTO  
COMMISSION POLICIES.**OPINION AND ORDER**OPEN MEETING  
March 29, 2022  
Phoenix, Arizona**BY THE COMMISSION:**

In compliance with Arizona Revised Statutes § 41-1057(A)(2) the Commission finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. Arizona Revised Statutes § 41-1057(A)(2) exempts the Arizona Corporation Commission ("Commission") from the statutes creating the Governor's Regulatory Review Council ("GRRC") and imposing requirements for GRRC review of rules and rulemakings but requires the Commission to "adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business."

2. Attachment A to this Order sets forth a Rules Review Procedure that is substantially similar to the GRRC review procedures set forth in A.R.S. §§ 41-1051-1057.

3. After due consideration at the March 29, 2022, Open Meeting, we find that it is in the public interest to adopt the Rules Review Procedure set forth in Attachment A and to place the Rules Review Procedure on the Commission's website. Further, we find that it is in the public interest for the new Rules Review Procedure to be effective immediately and to apply to all Commission rulemakings that have not yet had publication of a Notice of Proposed Rulemaking to commence the formal

1 rulemaking process.<sup>1</sup>

2 4. Under Art. 15, § 6 of the Arizona Constitution, the Commission has the authority to  
3 prescribe rules and regulations to govern proceedings instituted by and before it.

4 **CONCLUSIONS OF LAW**

5 1. The Commission is a constitutionally created agency with authority to promulgate  
6 orders, rules, and regulations regarding the conduct of its rulemaking processes pursuant to Article XV  
7 of the Arizona Constitution, and A.R.S. § 41-1057(A)(2).

8  
9 2. It is in the public interest to adopt the attached Rules Review Procedure as contemplated  
10 by A.R.S. § 41-1057(A)(2).

11  
12 **ORDER**

13 IT IS THEREFORE ORDERED that the Commission hereby adopts the Rules Review  
14 Procedure set forth in Attachment A, which shall apply to all Commission rulemakings that have not  
15 yet had publication of a Notice of Proposed Rulemaking to commence the formal rulemaking process.

16 IT IS FURTHER ORDERED that the Rules Review Procedure set forth in Attachment A shall  
17 be placed on the Commission's website.

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28 <sup>1</sup> This will allow the Commission to ensure that it is able to implement the Rules Review Procedure fully for each rulemaking to which it applies.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

*Lea M. Peterson*  
CHAIRWOMAN MARQUEZ PETERSON

**DISSENT**  
COMMISSIONER KENNEDY

*Matthew Olson*  
COMMISSIONER OLSON

*Anna Tovar*  
COMMISSIONER TOVAR

*James H. O'Connor*  
COMMISSIONER O'CONNOR



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,  
Executive Director of the Arizona Corporation Commission,  
have hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this 28 day of APR. 1 2022.

*MJ*  
MATTHEW J. NEUBERT  
EXECUTIVE DIRECTOR

DISSENT *Jason A. Kennedy*

DISSENT \_\_\_\_\_



# **ATTACHMENT A**

## **RULES REVIEW PROCEDURE**

### **I. Introduction**

Arizona Revised Statutes § 41-1057(A)(2) exempts the Arizona Corporation Commission (“Commission”) from the statutes creating the Governor’s Regulatory Review Council (“GRRC”) and imposing requirements for GRRC review of rules and rulemakings but requires the Commission to “adopt substantially similar review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.” The Commission adopts the following review procedures to govern its rules and rulemakings.

### **II. Commission review and approval**

- A. The Commission shall engage in a rulemaking process that is transparent and that considers input from stakeholders who are expected to be impacted by the resulting rules. Prior to beginning the formal rulemaking process, the Commission:
1. Shall open a Commission docket to serve as a repository of comments and informational filings from stakeholders and filings made by Commissioners and the Commission’s Staff;
  2. May invite input from stakeholders and the general public, through notices of inquiry soliciting responses to questions or workshops or other open meetings held to discuss and receive information on subjects that may be addressed in a rulemaking;
  3. Shall file in the Commission docket a draft of contemplated rule changes, providing at least a 30-day period for comments to be filed concerning the draft; and
  4. Shall, as set forth in subsection (III)(A), have a preliminary economic, small business, and consumer impact statement prepared by a third party for consideration and input from stakeholders in order to develop the final economic, small business, and consumer impact statement.

Comment: The above subsections exceed the requirements of the GRRC statutes.

- B. The Commission shall accept an early review petition of a proposed rule, in whole or in part, if the proposed rule is alleged to violate any of the criteria prescribed in subsection (II)(E) and if the early petition is filed by a person who would be adversely impacted by the proposed rule. The Commission may determine whether the proposed rule, in whole or in part, violates any of the criteria prescribed in subsection (II)(E).

Comment: The above subsection corresponds to A.R.S. § 41-1052 (B).

- C. Except as provided in subsection (II)(D), the Commission shall not commence formal rulemaking by submitting proposed rules for publication in the *Arizona Administrative*

*Register* unless the Commission has expressly made the following determinations based on the information known or reasonably available to the Commission at the time:

1. The economic, small business, and consumer impact summary in the preamble for the Notice of Proposed Rulemaking includes:
  - a. An identification of the proposed rulemaking, including all of the following:
    - i. The conduct and its frequency of occurrence that the rule is designed to change,
    - ii. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed, and
    - iii. The estimated change in frequency of the targeted conduct expected from the rule change;
  - b. A brief summary of the information to be included in the economic, small business, and consumer impact statement; and
  - c. The name and address of at least one Commission employee who may be contacted to submit or request additional data on the information to be included in the economic, small business, and consumer impact statement.
2. The approach taken in the proposed rules is expected to be the least intrusive or least costly alternative method of achieving the purpose of the proposed rulemaking.
3. The probable benefits of the proposed rules within Arizona outweigh the probable costs of the proposed rules within Arizona.
4. The proposed rules are written in a manner that is clear, concise, and understandable to the general public.
5. The proposed rules are not illegal, inconsistent with legislative intent, or beyond the Commission's legal authority.

Comment: The above subsections correspond to A.R.S. § 41-1055(A)(1)-(3) and § 41-1052(D)(3)-(5).

- D. Consistent with A.R.S. § 41-1055(D), the Commission shall engage in emergency rulemaking as authorized by A.R.S. § 41-1026 without preparing an economic, small business, and consumer impact statement. The Commission does not engage in expedited rulemaking as authorized by A.R.S. § 41-1027.

Comment: The above subsection corresponds to A.R.S. § 41-1055(D).

- E. The Commission shall not approve adoption of rules in a Notice of Final Rulemaking unless the Commission has expressly made the following determinations based on the information known or reasonably available to the Commission at the time:
  1. The final economic, small business, and consumer impact statement contains information from the state, data, and analysis as described in Section (III).



2. The final economic, small business, and consumer impact statement is generally accurate.
3. The probable benefits of the rules in Arizona outweigh the probable costs of the rules in Arizona, and the rules represent the alternative that imposes the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
4. The rules are written in a manner that is clear, concise, and understandable to the general public.
5. The rule is not illegal, inconsistent with legislative intent, or beyond the Commission's legal authority.
6. The Commission adequately addressed, in writing, the comments on the proposed rules and any supplemental proposed rules.
7. The rule is not a substantial change, considered as a whole, from the proposed rules and any supplemental proposed rules.
8. The preamble includes a reference to any study relevant to the rules that the Commission considered and either did or did not rely on in its evaluation of or justification for the rules.
9. The rules are not more stringent than a corresponding federal law unless there is legal authority to exceed the requirements of that federal law.

Comment: The above subsections correspond to A.R.S. § 41-1052(D) and § 41-1055(H).

- F. The Commission shall verify that a rule with new fees does not violate § 41-1008.

Comment: The above subsection corresponds to A.R.S. § 41-1052(E). Omitted was the requirement of a 2/3 majority in the second sentence of 41-1052(E). The Commission acts by a majority vote, see A.R.S. § 40-102(C).

- G. The Commission shall verify that a rule with an immediate effective date complies with § 41-1032.

Comment: The above subsection corresponds to A.R.S. § 41-1052(F). Omitted was the requirement of a 2/3 majority in the second sentence of 41-1052(F). The Commission acts by a majority vote, see A.R.S. § 40-102(C).

- H. If the rule relies on scientific principles or methods, including a study disclosed pursuant to subsection (III)(E)(8), and a person submits an analysis to the Commission questioning whether the rule is based on valid scientific or reliable principles or methods, the Commission shall not approve the rule unless the Commission determines that the rule is based on valid scientific or reliable principles or methods that are specific and not of a general nature. In making a determination of reliability or validity, the Commission shall consider the following factors as applicable to the rule:

1. The authors of the study, principle or method have subject matter knowledge, skill, experience, training, and expertise.

2. The study, principle or method is based on sufficient facts or data.
3. The study is the product of reliable principles and methods.
4. The study and its conclusions, principles, or methods have been tested or subjected to peer-reviewed publications.
5. The known or potential error rate of the study, principle, or method has been identified along with its basis.
6. The methodology and approach of the study, principle, or method are generally accepted in the scientific community.

Comment: The above subsections correspond to A.R.S. § 41-1052(G).

- I. At any time following the opening of the informal docket on rulemaking and at any time during the formal rulemaking process, a person may submit written comments to the Commission that are within the scope of subsections (II)(E), (F), (G), or (H). The Commission will also accept such comments during the formal rulemaking oral proceedings held by the Commission. The Commission may allow public comment or testimony at an Open Meeting or other proceeding that the Commission may order, within the scope of subsections (II)(E), (F), (G), or (H).

Comment: The above subsection corresponds to A.R.S. § 41-1052(I). The Commission accepts written comments at any time during its informal rulemaking process, and there is no time limit on when written comments can be submitted in the formal rulemaking proceedings.

### **III. Economic, small business, and consumer impact statement (A.R.S. § 41-1055)**

- A. Except as provided in subsection (II)(D), the Commission shall have prepared by a third party both a preliminary and a final economic, small business, and consumer impact statement for each proposed rulemaking, each of which shall include the following:
  1. An identification of the proposed rulemaking.
  2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.
  3. A cost-benefit analysis of the following:
    - a. The probable costs and benefits to the Commission and any other agencies directly affected by the implementation and enforcement of the proposed rules, including (if applicable) the probable costs to the Commission for and number of new full-time employees necessary to implement and enforce the proposed rules. The preparer of the economic, small business, and consumer impact statement shall notify the Commission of the number of new full-time employees necessary to implement and enforce the rules before the rules are approved by the Commission.
    - b. The probable costs and benefits to a political subdivision of Arizona directly affected by the implementation and enforcement of the



proposed rules.

- c. The probable costs and benefits to businesses directly affected by the proposed rules, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rules.
  - d. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of Arizona, and on industrial, commercial, and residential ratepayers (where applicable) directly affected by the proposed rules.
4. A statement of the probable impact of the proposed rulemaking on small businesses, including:
    - a. An identification of the small businesses subject to the proposed rules.
    - b. The administrative and other costs required for compliance with the proposed rules.
    - c. A description of the methods prescribed in A.R.S. § 41-1035 that the Commission may use to reduce the impact on small businesses, with reasons for the Commission's decision to use or not use each method.
    - d. The probable cost and benefit to private persons and consumers who will be directly affected by the proposed rules.
  5. A statement of the probable effect of the proposed rules on state revenues.
  6. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules, including quantification of the costs and benefits for each option to the extent possible and providing the rationale for not using non-selected alternatives.
  7. A description of any data on which the proposed rules are based with a detailed explanation of how the data was obtained and why the data is acceptable data. For the purposes of this paragraph, "acceptable data" means empirical, replicable, and testable data as evidenced in supporting documentation, statistics, reports, studies, or research.

Comment: The above subsections correspond to A.R.S. § 41-1055(B). The contents of A.R.S. § 41-1055(A) are contained above in subsection (II)(C).

- B. If for any reason adequate data are not reasonably available to comply with the requirements of subsection (III)(A), the third party engaged to produce the economic impact statement shall explain in the economic impact statement the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

Comment: The above subsection corresponds to § 41-1055(C). The Commission does not have the statutory authority to adopt the last sentence of § 41-1055(C), and it was not included.



- C. The cost-benefit analysis required by subsection (III)(A) shall calculate only the costs and benefits that occur in this state.

Comment: The above subsection corresponds to § 41-1055(H).

- D. If a person submits an analysis to the Commission regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, the Commission shall consider the analysis.

Comment: The above subsection corresponds to A.R.S. § 41-1055(I).

#### **IV. Review by Commission of Existing Rules (A.R.S. § 41-1056)**

- A. At least once every five years, the Commission shall review all of its rules to determine whether any rule should be amended or repealed.
1. The Commission shall adopt a schedule for reviewing all of its rules, in sets by subject area, over the five years after the effective date of this document and shall post the schedule on its website.
  2. The Commission shall establish an ongoing review schedule to be followed after the first five years.
  3. The Commission may reschedule the review of a set of rules if all or the majority of the rules in the set have been newly adopted or substantially revised within the two years immediately preceding the due date of the scheduled review.

Comment: The above subsections correspond to the first sentence of § 41-1056(A) and with § 41-1056(C) and (H).

- B. The Commission's review of its rules shall be memorialized in a report that includes a certification that the Commission is in compliance with § 41-1091 and a concise analysis of the following information for each individual section within the reviewed set of rules:
1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
  2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the Commission questioning whether the rule is based on valid scientific or reliable principals or methods.
  3. Authorization of the rule by existing statutes.
  4. Whether the rule is consistent with statutes, other Commission rules, and current Commission enforcement policy.
  5. The clarity, conciseness, and understandability of the rule.
  6. The estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule (if any).
  7. Any analysis submitted to the Commission by another person regarding the

rule's impact on Arizona businesses' competitiveness as compared to the competitiveness of businesses in other states.

8. If applicable, that the agency completed the previous five year review process.
9. Whether the probable benefits of the rule in Arizona outweigh the probable costs of the rule in Arizona, and whether the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
10. Whether the rule is more stringent than a corresponding federal law and, if so, whether there is and the source of legal authority to exceed the requirements of that federal law.
11. For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with § 41-1037.

Comment: The above subsections correspond to § 41-1056(A)(1)-(11).

- C. If the Commission determines that any of the rules within a set of rules needs to be revised due to the information included in the review report and based upon the factors listed in A.R.S. § 41-1056(E)(1)-(8), the Commission shall determine whether to initiate an informal rulemaking process or other appropriate rulemaking process for the rule/s and the timing of such process.

Comment: The above subsection corresponds to § 41-1056(E).

- D. At least 90 days before the due date of a report, the Commission's Executive Director shall send a written notice to the Director of the Division responsible for preparing the report, providing the due date of the report and a list of the rules to be reviewed.

Comment: The above subsection corresponds to § 41-1056(L)

- E. The Commission may review rules outside of the five-year-review process upon the request of a Commissioner.

Comment: The above subsection corresponds to § 41-1056(D).

- F. The Commission may grant an extension of time to conduct its five-year review upon the demonstration of good cause by the Commission Division responsible for preparing the five-year-review report.

Comment: The above subsection corresponds to § 41-1056(I).

- G. A person who is regulated by or could be regulated by an obsolete rule may petition the Commission to have the obsolete rule considered in a five-year-review report with a recommendation for repeal of the rule.

Comment: The above subsection corresponds to § 41-1056(M)



- H. A person who is required to obtain or could be required to obtain a license may petition the Commission to consider including a recommendation for reducing the applicable licensing time frame in the five-year-review report for the applicable rule.

Comment: The above subsection corresponds to § 41-1056(N).

**V. Submission of Final Rulemaking Packages (Nothing similar in the GRRC statute)**

- A. The Commission shall submit the final rulemaking package for rules that are not promulgated solely under the Commission's constitutional ratemaking authority to the Attorney General for review and approval pursuant to A.R.S. § 41-1044.
- B. The Commission may submit the final rulemaking package for rules that are promulgated under the Commission's constitutional ratemaking authority directly to the Secretary of State for publication in the *Arizona Administrative Register* and inclusion in the Arizona Administrative Code.

Comment: The above subsections are authorized by A.R.S. § 41-1044 and *State ex rel. Corbin v. Arizona Corporation Commission*, 174 Ariz. 216 (App. 1992).

**VI. Impact Statements; Appeals (A.R.S. § 41-1056.01)**

- A. Within two years after a rule is finalized, a person who is or may be affected by the rule may file a written petition with the Commission objecting to all or part of the rule on any of the following grounds:
1. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the final economic, small business, and consumer impact statement submitted during the making of the rule.
  2. The actual economic, small business, or consumer impact was not estimated in the final economic, small business, and consumer impact statement submitted during the making of the rule, and that actual impact imposes a significant burden on persons subject to the rule.
  3. The Commission did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

Comment: The above subsections correspond to § 41-1056.01(A).

- B. The burden of proof is on the petitioner to show, by a preponderance of the evidence, that any of the provisions set forth in subsection (VI)(A) are met.

Comment: The above subsection corresponds to § 41-1056.01(B).

- C. The Commission shall accept comment on and reevaluate the rule and its economic impacts as follows:
1. Within 30 days after the written petition is filed, the Commission shall have notice of the petition published in the *Arizona Administrative Register*.

2. The Commission shall establish a comment period of at least 30 days after publication of the notice and shall name a close of comment date. During the comment period, the Commission shall afford persons the opportunity to submit written statements, arguments, data, and views on the rule and its economic impacts through filings in an assigned Commission docket.
3. Within 30 days after the close of comment date, the Commission shall submit to the Office of the Secretary of State, for publication in the *Arizona Administrative Register*, a notice including a written summary of the comments received, the Commission's response to those comments, and the Commission's determination on whether to initiate a rulemaking to amend or repeal the rule.
4. If the Commission's determination is that a rulemaking should be initiated to amend or repeal the rule, the Commission shall, within 45 days after publication of its determination, open a Commission rulemaking docket and file with the Office of the Secretary of State a Notice of Rulemaking Docket Opening for the rulemaking.

Comment: The above subsections correspond to § 41-1056.01(C).

- D. A person who is or may be affected by the Commission's determination on whether to initiate a rulemaking to amend or repeal the rule may request Commission reconsideration of that determination by filing a petition for reconsideration in the relevant Commission docket within 30 days after the Commission makes its determination.

Comment: The above subsection corresponds to § 41-1056.01(D).

- E. The Commission shall place the petition for reconsideration on a Commission Open Meeting agenda if at least three Commissioners file letters making such a request in the relevant docket within 14 days after the filing of the petition for reconsideration with the Commission.

Comment: The above subsection corresponds to § 41-1056.01(E).

- F. Upon reconsideration of the Commission's determination, the Commission shall consider the written summary prepared under subsection (VI)(C)(3), may consider additional public comment provided in the relevant docket or during Open Meeting or other public comment proceedings, and shall reach its determination on reconsideration based on the factors in subsection (VI)(A).

Comment: The above subsection corresponds to § 41-1056.01(F) and (G).

- G. A person who is or may be affected by the Commission's determination on reconsideration may pursue any legal action against the Commission afforded under the law.

Comment: The above subsection exceeds the GRRC statutes.